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October 21, 2008

Via Electronic Mail

Joan Gorga, Director
Department of Public Health
Determination of Need Program
2 Boylston Street, 3rd Floor
Boston, MA 02116

Re: Determination of Need Transfers

Dear Ms. Gorga:

We are writing to provide written testimony pursuant to the Notice of Informational Hearing and Comment Period with respect to 105 CMR 100.246. Specifically, as requested, our comments relate to the process to be used for the review of requests for transfer of ownership under 105 CMR 100.246 as it relates to equipment that was acquired pursuant to a so-called "physician exemption letter" ("PEL"). We offer the following comments.

As the regulations provide that innovative services or new technology acquired pursuant to a PEL is treated as if the equipment was acquired pursuant to a DoN for purposes of review of addition, expansion, conversion, transfer of site and transfer of ownership, such actions should be reviewed using the same standards set forth for such review of any equipment approved pursuant to a DoN. There should not be a different standard of review or additional requirements for a transfer of ownership of equipment acquired and implemented under PEL than there is for any similarly situated provider, such as a licensed clinic. Accordingly, transferees should not be required to satisfy the review requirements of 105 CMR 100.533. Such a requirement would negate 105 CMR 100.246, which provides that for such circumstances, the equipment shall be deemed to have been acquired pursuant to a DoN. If the equipment had been acquired pursuant to a DoN, it typically would be a licensed clinic or other health care facility. Therefore the transfer of ownership process for such a licensed facility should be applicable. It would be through such process that the suitability of the new owners is evaluated similar to the change in ownership of any other licensed clinic.

By way of example, equipment acquired pursuant to a PEL and which is operated by a licensed clinic should follow the change of ownership process that is applicable to clinics. As a result, the process of review should follow the requirements of 100 CMR 140.105, which

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governs review of transfer of ownership of a licensed clinic. This process would not place any new or additional requirements on a service implemented through a PEL and would give true effect to the treatment of such service as though it were acquired through a DoN.

We appreciate the opportunity to provide written comments with respect to the process for review of a request for transfer of ownership under 105 CMR 100.246. Accordingly, we submit these comments pursuant to the Notice of Informational Hearing issued by the Department for October 16, 2008. If you have any questions or require additional information, please contact Nina Edwards or me at (617) 598-6700.

Sincerely,

Andrew S. Levine